

REMARKS

Claims 1 and 3-11 are pending in the present application and were rejected.

Applicant's Response to Claim Rejections under 35 U.S.C. §102

Claims 1, 3, 4, 7 and 8 were rejected under 35 U.S.C. §102(b) as being anticipated by Kistler (U.S. Patent No. 4,291,688).

With respect to independent claim 1, the Office Action argues that **Kistler** discloses the invention as claimed. The Office Action appears to focus on the sounding device 18 of **Kistler** as anticipating the whistle in the present application. While **Kistler** does disclose a sounding device, it does not disclose the structure recited by claim 1. Claim 1 recites "...a mouthpiece with at least one air intake opening and a whistle attached to said at least one air intake opening..."

Kistler discloses an inhaler with four major parts: a skirt 2, a headpiece 3, a mouthpiece 4, and a container 5. Reference numeral 20 is a cap to protect mouthpiece 4, which does not appear to contain an air intake hole of any kind. Sounding device 18 is a plastic piece which is situated between headpiece 3 and skirt 2. Sounding piece 18 is shown in the context of the inhaler in the cross-sections of Figs. 1 and 2, and alone in Figs. 3-5. The preferred embodiment of the sounding device of Figures 3-5 contains a reed 24 which makes a sound when sufficient air is passed through. It also contains aperture 25, into which boss 8 of the head portion is disposed. The valve stem 6 of container 5 passes through this aperture. Sounding device 18 also contains two air holes 27 which are used as an air passageway through sounding device 18. See column 5, lines 17-26.

The Office Action argues that mouthpiece 4 of **Kistler** contains at least one air intake opening. Since mouthpiece 4 appears not to contain any air intake openings, it is unclear to what the Office Action is referring. It is presumed that the Office Action is not referring to air holes 27 situated in sounding device 18, since those are described as “an air vent 27,” a part of the sounding device. Furthermore, it is presumed that the Office Action is not referring to recess 23 in which reed 24 is situated, since this is described as “a hollow resonant chamber 23,” also a part of the sounding device. This recess is disposed in the sounding device which is placed between the skirt 2 and the headpiece 3, not in the mouthpiece 4. Thus, Applicant is unclear as to what the Office Action regards as an air intake opening.

Thus, with regard to claim 1, and all claims dependent thereon, Applicant respectfully argue that **Kistler** does not disclose a mouthpiece with at least one air opening and a whistle attached to this air opening. Favorable reconsideration is respectfully requested.

With respect to independent claim 7, the Office Action now appears to argue that numeral 4 in **Kistler** refers to a drug delivery opening; contradicting the earlier statement that numeral 4 is a mouthpiece. Since **Kistler** specifically refers to mouthpiece 4, Applicant respectfully argues that reference numeral 4 is a mouthpiece.

Claim 7 recites a “...drug delivery opening for introducing air to take up a finely powdered drug into a delivery passage...” In Figure 14, air hole 15e is a drug delivery opening. Air 19a is introduced by inhalation, and takes up finely powdered drug 19e from drug tube 15b. Figures 10 and 14 also disclose that the inhaler has an air aperture 15c, which acts as an air intake opening, and a whistle 16 attached to this air intake opening.

Applicant respectfully argues that even if mouthpiece 4 is broadly interpreted as a drug delivery opening, it does not read on the claims. Mouthpiece 4 does not operate to introduce air to take up a drug. Mouthpiece 4 is merely a conduit to allow the drug to be administered to the patient. The inhaler of **Kistler** does not appear to “introduce[e] air to take up a finely powdered drug.” Instead, **Kistler** operates using an aerosol container 5 to deliver the drug.

Furthermore, **Kistler** does not appear to disclose a whistle attached to an air intake opening. The Office Action refers to column 3, lines 37-44 in reference to the air intake opening. From the context, it appears that **Kistler** may be describing air holes 27 in this passage. Although it is possible that the Examiner is broadly reading **Kistler** such that the passageway through headpiece 3 and skirt 2 is regarded to be an air intake opening with a sounding device 18 (a whistle) attached, because in Figure 2 such a passageway would be entirely blocked and in Figure 3 would be blocked except for air holes 27, Applicant argues that this passage refers to air holes 27. Thus, Applicant respectfully submits that claim 7 and all claims dependent thereon are patentable for the reasons stated above.

Applicant’s Response to Claim Rejections under 35 U.S.C. §102 and §103

Claims 5, 9 and 10 were rejected under 35 U.S.C. §102(b) as anticipated by, or in the alternative, §103(a) as being unpatentable over Kistler.

With regard to these rejections, the Office Action again relies on the passage of **Kistler** at column 3, lines 37-44. As stated above, it is unclear to what this refers. However, it appears

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from the context of this passage that the “channels” are not situated in the mouthpiece, as recited by claim 5. Therefore, Applicant respectfully traverses the rejection of claim 5.

With respect to claims 9 and 10, Applicant respectfully argues that these claims are patentable due to their indirect dependency on claim 7, which Applicant argues is patentable for at least the reasons stated above.

Claims 6 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kistler, as applied to claims 1, 3-5 and 7-10 above, in view of McGavin (“A Modified Aerosol Inhaler for Teaching Techniques”)

The Office Action relies on **McGavin** for the teachings of claims 6 and 11. **McGavin** is specifically referred to in **Kistler**, at column 1, lines 34-50. While **McGavin** does appear to disclose a removable whistle as argued by the Office Action, it does not appear to recite that such a whistle is inserted into or removed from an air intake opening in the mouthpiece (claim 6) or one of four air intake openings (claim 11). Thus, Applicant respectfully traverses the rejection.

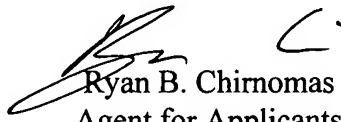
For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants’ undersigned agent.

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If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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